PAYMENTS STRATEGY SPRINT RESPONSE

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As set out in its Terms of Reference, the Strategic Working Group (SWG) is expected to produce a report setting out views on how Open Banking should be developed beyond its current requirements, why certain priorities should be considered, and what the suggested costs and benefits are of the proposals put forward for the Joint Regulatory Oversight Committee's consideration (Committee).

We welcome evidence-based responses to the questions posed by the Committee. Please complete your responses in the box below each question in Word format. Written submissions will not be attributed to you, your firm or association and will be presented in any report on an anonymous basis unless otherwise requested by the contributor.

Where you wish to provide additional supporting evidence, please provide these in the Appendix section. Please do use hyperlinks, if necessary, however, please do not send another other attachments. The preferred format for submitting this document is in docx.

Please note the deadline for the written submissions is 12 noon on Wednesday 21st September.

QUESTION 1:

What should the approach be to resolve issues and possible barriers around open banking payments, for example better supporting high value payments? Should a risk-based approach to open banking payments be considered or not? Please provide rationale and evidence. How can account providers and TPPs work together to manage the associated risks (if any)? Are there particular use-cases and/or scenarios in which additional or different models are required or not? Please provide rationale and evidence.

As JROC is presented with issues and possible barriers around open banking payments the committee needs to have a process to filter issues into those that if not quickly resolved will put at risk the adoption and successful development of OB (like the current higher value payments problem), and then quickly resolve them, and those that are of a more strategic impact to the longer term growth of OB (like broadening the availability of VRP beyond sweeping) which can be passed to the SWG for consideration. OB payments are sufficiently nascent that without a fast-track route for existential issues the eco-system might collapse.

- OB higher value payments (>approx. £1,500) should be the strongest value proposition for TPPs to their business customers and their end customers. Paying these larger payments via OB can save businesses significant cost versus % card payments, and reduce misdirection, fraud and reconciliation risks and costs as an alternative to native push payments.
- A number of the larger ASPSPs have made these payments difficult or impossible to make due to their application of fraud controls.
    - Lloyds Banking Group and TSB have put in place fraud checks for first time payments that require the payer to call their bank fraud team prior to an OB payment being completed – callers can wait for up to an hour to talk to the fraud team! This considerably slows down the end-customer payment process, causing most customers to abandon payment, and businesses/merchants to lose confidence in OB as a safe and appropriate payment

mechanism. We also have experience of Halifax and Lloyds fraud teams telling their customer that it was not safe to make the OB payment and that they should have used a debit card. These have been reported to LBG via OBIE and we understand retraining has been undertaken.
  - Barclays will not allow a first-time payment to be made to a new payee for more than £2,000 by open banking. In mobile and online banking, a customer simply needs to make a low value payment first, and then immediately follow with the high value payment, as second payments are not restricted in the same way (it is not clear how this approach is an effective fraud prevention tool given the simple work around available). For OB payments Barclays always treat each one as a first-time payment, and doesn't even consult their customers list of manually made payments. This means that Barclays customers can <u>never</u> make an OB payment for more than £2,000. This lack of equivalence has been reported to the FCA but Barclays do not have a concrete plan to fix this problem.
- These problems with higher value payments have already caused one of our clients in the travel industry to stop using our service – the payment process was too uncertain, and the fraud referrals and blockages were reflecting poorly on their business. We are also reluctant to approach a number of key sectors that will benefit from OB payments because of the current certainty of poor payments experiences. These sectors (who can also see the greatest potential value from OB payments and should be early adopters) include: savings, wealth management, automotive, property, professional services and travel. We also understand this restriction is impacting the HMRC flagship tax payment use case.
- It is paramount when assessing the risk of this problem that the urgent need for a solution and the huge impact should a solution not be implemented quickly be given due and appropriate weight; the solution will have to involve cooperation between TPPs and ASPSPs. Given the urgency the timelines for technical and regulatory changes and the current severe impact of this constraint, we need a tactical followed by a medium-term solution.
  - **Tactically**, ASPSPs need to take a risk-based approach and acknowledge that OB initiated payments are much lower risk for scams (the apparent risk ASPSPs seem to be trying to control) than mobile or online customer-initiated payments. We have heard this from a number of ASPSPs and understand that the FCA have fraud reports from ASPSPs that confirm this. ASPSPs need to increase their higher value threshold for OB payments so that the key OB use cases can be delivered. We would suggest £25,000 to allow for Cash ISA payments plus a financial advisor fee, for example, via OB. ASPSPs need also to be clear on what risks they are trying to address. HSBC for example, requires customers to re-enter the amount and last four digits of the payee account number for a payment to a new payee. This is presumably to check that in mobile and online banking the customer has entered these correctly in the first place. Most TPPs will provide these details to the ASPSP from their own data on behalf of the customer, meaning this check is no longer needed – just as PIS payments don't go through Confirmation of Payee because the vast majority of the TPP provided account details have been checked by the TPP, or even sourced directly from the Payee's ASPSP in the case of Ordo.
  - It has been suggested that due to a 'parity' principle in PSD2 ASPSPs need to treat OB payments *identically* to customer initiated mobile or online payments. This is true in that a risk-based approach should be taken but does not require that these different channels be treated as if they represented the same risk level, which they don't – same risk, same treatment, different risk, different treatment. Regulation 69(2)(c) of the Payment Services Regulations 2017 states:

[….where a payer is using a PISP, the ASPSP must-] "treat the payment order in the same way as a payment order received directly from the payer, in particular in terms of timing, priority or charges, unless the account servicing payment service provider has objective reasons for treating the payment order differently;"

Where higher value transactions are being stopped and prohibited in the case of Barclays and made more difficult to the point of abandonment in the case of other ASPSPs, this is not applying objective reasons, it is treating a lower risk payment wrongly as higher risk that it is proven to be.

- Where the ASPSP is managing the risk that the payer is not who they say they are, i.e., there has been an account takeover of some description, it is important that ASPSPs apply consistent Strong Customer Authentication (SCA) approaches across mobile and internet own channels, OB payments and card payments. If normal SCA is good enough for cards, it should be good enough for own channel and OB payments.
- **Medium term**, OB standards could be expanded to allow TPPs to pass risk information to the ASPSP as part of the PIS call. However, this should not be a straight read across from card merchant codes which serve to inform a card issuer of the nature of the merchant's business which can impact the charge back risk on the issuer. In OB payments, the only risk potentially being carried by the ASPSP is that the 'merchant' is a fraudster and that the ASPSP will have to underwrite the payment for the Contingent Reimbursement Model (CRM), should the payee prove to be a criminal. Given this, all the ASPSP needs to know is that the merchant, and their bank account have been properly KYCd by the TPP and the merchant's own ASPSP. Development and adoption of these additional risk indicators will take some time, and may be somewhat overtaken by the strategic solution below. Usefully this standard could include confirmation that the payee details have been provided by the TPP rather than simply entered by the PSU. When they have been provided by the TPP there is no reason to undertake further checks with the PSU. OBIE should continue the work it has done in the past to quickly layout, from first principles rather than copying card approaches, what information a TPP should share with the ASPSP. This need not be complicated to achieve good outcomes:
  - Have the payee details been provided by the payer(PSU) rather than the TPP (copying a simple push payment)? If yes, then ASPSP should adopt their standard mobile or online payment practice with confirmation of payee and APP scam questions.
  - If payee details have been provided by TPP, has the TPP KYC'd the merchant and their bank account? If yes, ASPSP does not need to verify or check the payee details or their source and the payer can decide whether to authorise payment. If no, then ASPSP should adopt its standard APP Scam questions approach.
- **A strategic solution**. The medium-term solution described above however misses the broader issue of APP scams and the appropriateness of the current CRM. Currently responsibility is on the paying bank for APP Scam protection and consumer reimbursement. This is wrong. Paying banks do not have best access to the information needed to identify scam transactions, other than by scaring their customers into not making any larger payments. Payee banks, already have a regulatory obligation to ensure they know their customers, and that the accounts they operate are not being used for criminal purposes. They also own their KYC processes and have full visibility of how their customers' accounts are being used. Payee banks need to hold full responsibility for the prevention of criminal activity on their accounts and the reimbursement of consumers when the accounts they manage process criminal transactions. This change will firstly more effectively address APP scams, and secondly, remove the need for some of the medium-term solution above. We know from the PSR's recent meeting with the Treasury Select Committee that the PSR sees the logic in this change. The PSR needs to take urgent action to execute this important change.

- Even where the regulatory requirement to support services is clear, for example for sweeping, there are currently misunderstandings and confusion that ASPSPs can use to limit its adoption.

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- Earlier in the year the CMA clarified that sweeping funds into a customer's payment account simply to use those funds to immediately and automatically settle an e-commerce transaction with a merchant would be an abuse of sweeping and was not an allowable use case. The CMA also restated that the remedy purpose of sweeping was to enable competition for savings and unsecured credit propositions (to compete with overdrafts).
- OBIE has recently published guidance stating that the CMA clarification means that neither BNPL nor the repayment of a short-term loan is a permitted use case because it involves e-commerce.
- This interpretation essentially neuters the most important remedy effect of sweeping and is a result of a misreading of the CMA's clarification.
- Repayment of a short-term loan or a BNPL repayment is not an e-commerce transaction. E-commerce happens when a consumer makes a purchase. This will be funded by the BNPL provider for BNPL or by the consumer using money borrowed from the short-term loan provider and paid into their current account. Neither of these payments are using VRP. Both of these situations provide the consumer with an alternative to using their bank's overdraft facility. VRP is used later, long after the e-commerce transaction is done and dusted to achieve repayment of the BNPL loan to the BNPL provider or short-term lender.
- We have consulted the CMA Order and cannot see any other legitimate reason why OBIE's interpretation is correct.
- We have flagged our concerns about this misrepresentation to OBIE but have not received a response.
- In the absence of public clarification, we are concerned that ASPSPs will try and prevent us offering sweeping to several short-term credit provider customers of ours who wish to be early adopters of this permitted VRP use case this autumn. It only takes one CMA9 ASPSP to take this view for our proposition to be undermined and our customers to lose confidence in OB sweeping.

QUESTION 2:

What is needed to promote the adoption of open banking account-to-account transactions, including recommendations and requirements from end-users and merchants? Please provide rationale and evidence.

- Beyond the points raised in Q1 the following areas need to be addressed to promote the adoption of OB account-to-account payments:
    - OB payments need to be able to provide a comprehensive and competitive full set of payments capabilities by enabling ubiquitous offering of non-sweeping OB Variable Recurring Payments (VRP) with a competitive cost base that encourages TPP innovation and merchant and biller adoption.
    - Government needs to remove the element of non-discounting regulation guidance that currently prevents merchants and other businesses from sharing the cost reductions available from OB payments versus cards with their customers in the form of discounts or cash back payments when OB is used. Bizarrely, although merchants are prevented by regulatory guidance from offering discounts for different payment mechanisms, card issuers (including ASPSPs) can achieve the same effect by offering cash back on the usage of the cards they issue, funded by the merchant fees merchants pay! It should also be noted that even regulators are not consistently following this guidance – the Information Commissioners Office (ICO) offers payment discounts for Direct Debit payments!

  - There may be merit in agreeing common language and terminology (not a trust mark) to identify OB payments. "Bank Payment" and "Pay by Bank" don't seem to work as they do not differentiate from current customer push payments. One of our customers is using the phrase *'Smart One Time Request via Open Banking'* when communicating with its end users.
- Strategically, opening up of non-sweeping VRP at a competitive price is what many of our customers tell us will drive their adoption of OB payments. While individually authorised OB payments are interesting, services enabled by VRP would be transformative. Services like a real time alternative to Direct Debit, single-click functionality for regularly visited e-commerce sites, and even repeating physical Point of Sale transactions in transit etc. VRP could offer new competitive and functionally richer options to Direct Debit and Continuous Payment Authority (CPA) card payments.
  - **As an alternative to Direct Debit.** VRP enabled solutions (if supported by ASPSPs) will be able to provide substantial benefits to businesses and their customers.
    - Billing business advantages. VRP services will allow mandates to be securely set up by billers and as soon as authorised by the customer used in real time. This compares to the relatively insecure setup process and the required 10 day wait before a first payment can be taken with Direct Debit. Businesses will be able to collect payments (subject to the customer mandate) at any time in real time, and if the payment is not made (due to lack of credit or customer mandate cancellation) the business learns in real time, not up to four days later. This will enable much more efficient biller business processes. Many businesses are excluded from being able to originate Direct Debits because their ASPSP will not sponsor them (due to the risks implicit within the DD Guarantee). Consequently, these businesses are forced to use card-based continuous payment authority – see below.
    - End customer advantages. VRP enabled services will provide the end-customer with complete real time control over their payments. Unlike Direct Debit where cancellations need to be actioned at least 24 hours before payment is due to be effective. The Ordo VRP service will also give the end customer complete oversight of how the mandate is being used, including a full payments history. Finally, with VRP there is no risk that a Direct Debit is set up on your account without your knowledge as the Payer has to authorise the mandate with their bank.
    - Industry advantages. Replacement of Direct Debit by competing TPP provided VRP services also opens up the possibility that the current 50+ year old Direct Debit service could ultimately be retired and not replaced with an expensive new central platform as is currently suggested in the New Payments Architecture (NPA).
  - **As an alternative to using cards under a continuous payment authority**, further benefits will arise to businesses and their customer.
    - Businesses will be able to collect real time, irrevocable payments from their customers without the costs and chargeback risks of card CPAs. There are a wide variety of use cases for this capability from subscription collection through e-commerce to physical PoS.
    - Customers will retain full control of the mandate they have authorised, and be able to specifically track, control and set limits on its usage. None of these facilities are available to customers under CPA.
    - In the situation where a consumer goes to huge effort to stop an unwanted payment they have remembered will be made using a continuous payment authority on a card by stopping their card, we have seen evidence that the card issuer advises of the continuous payment authority to be placed on the replacement card, whereby thwarting the extensive efforts of the consumer to prevent a payment from occurring.

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- There are currently two main barriers to VRP delivering this promise. Firstly, ubiquitous support by ASPSPs for non-sweeping use cases, and secondly, a workable commercial model.
  - **Ubiquity**. For VRP services to be attractive to businesses they need to be certain that the bulk of their customers are able to access the service. If one or more major banks is not participating, then the proposition is fundamentally weakened to the point of non-usability. As an absolute minimum the CMA9 ASPSPs must support. Beyond the CMA9, as other banks adopt VRP, the negative impact on the non-participants of not being able to offer the service to their customers may become more significant and competition may drive the final roll out. However, a universal regulatory requirement to support the service would resolve any uncertainty about this effect and accelerate adoption.
  - **The suggested commercial model**. Non-sweeping VRP has been characterised within the industry as the first example of payment 'Premium-APIs', chargeable by ASPSPs to TPPs, that will financially encourage ASPSPs to support OB and indeed presents an opportunity for ASPSPs to start earning a return on all their investment in OB as ASPSPs *"don't charge for OB payments"*. Looking at each of these points in turn:
    - **Premium APIs chargeable by ASPSPs to TPPs.** As stated above, for a TPP to deliver a credible VRP enabled service they will need to support all the major UK banks. A TPP can only purchase VRP for its customer's end-customers from that end-customer's bank. To support NatWest payers Ordo needs an agreement with NatWest, Barclays customers an agreement with Barclays. Each ASPSP is, de facto, a natural monopoly provider of VRP for its customers. TPPs like Ordo will have no choice and will have to either accept the commercial offer from each ASPSP or not provide VRP services at all. As there is no market, there is no cost-oriented price setting mechanism. Prices charged will potentially vary substantially between ASPSPs and may even have different structures.
    - **Financial Incentives on ASPSPs to support OB.** Our current discussions with the very limited number of ASPSPs that are considering non-sweeping VRP suggest that far from incentivising ASPSPs to support OB, we are being told that pricing is being structured (for example as % value) and set at sufficiently high levels that VRP services won't be very price competitive to cards, minimising cannibalisation of bank card issuing revenues. In addition to these high charges, ASPSPs also want to vet individual TPP customers and use cases. It is hard to see any commercial models and ASPSP premium API charges that would be low enough to enable customer take-up of TPP services while not at the same time cannibalising existing bank card issuing revenues.
    - **Earning a return on historical ASPSP OB investments.** Some players argue that given the investment they have made in OB ASPSP capability it is only right that they can now earn a return on that investment through premium API charging. The CMA Order and the PSD2 regulations imposed OB ASPSP development on ASPSPs as a remedy to try and address a lack of competition in banking and payments. These costs are a price ASPSPs have had to pay for the lack of competition, not an investment for a return to be earned from.
    - **ASPSPs don't charge for OB payments.** This is incorrect. ASPSPs are free to and do charge their customers for OB initiated payments in exactly the same way they charge for customer-initiated payments. Many corporates and small business pay both to send and receive all these types of payments, and where they don't on a transaction by transaction basis that is due to commercial decisions on discounting or bundling that their ASPSP has made in response to competition. ASPSPs have chosen not to charge consumers on a payment-by-payment basis for Faster Payments for commercial reasons and earn their return from the bundle of value they provide.

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- **A workable commercial model.** Given the arguments outlined above, what commercial model needs to be applied to non-sweeping VRP? A possible solution is for the regulator (The PSR, as the regulator of all participants in designated payments systems such as Faster Payments) to develop a cost-oriented single regulated price for ASPSPs to charge TPPs for VRPs, noting that ASPSPs would also have to suspend normal charging for the Faster Payments made as part of VRP. This is a complex process requiring continual regulatory intervention and is not necessary. A better solution is to extend the current OB single payment/sweeping pricing model to VRP. In this model ASPSPs would apply their normal Faster Payments pricing to the Faster Payments sent and received for VRP. Arguably ASPSPs would be earning a greater return on these payments as they won't have the incremental costs of SCA they must support for single OB and own channel payments. This is essentially the model that has operated for Direct Debits for many years with Banks having the option to charge their customers for sending and receiving Direct Debits and Direct Debit service providers charging their business customers for the enabling services they provide. A very significant advantage of this commercial model is that dynamic competitive pressures on ASPSP pricing are retained. If a business is dissatisfied with the charges its bank is making for Faster Payments (including those supporting VRP), it has the option of switching banks or even opening an account for VRP payments at a more competitive institution. Similarly, if some banks started to charge consumer to send Faster Payments (including those delivering VRP), the consumer could switch banks to a more competitive player if they were unhappy.
- **Making the workable commercial model a reality.** Based upon the underlying economics of banks and their existing card issuing revenues, and the discussions we have had with a number of ASPSPs it is clear that even with an uncompetitive premium API charging model, let alone the existing single payment OB pricing model, there will not be a critical mass of payers enabled for VRP to make VRP enabled propositions work. For the CMA9 who have had to build VRP for sweeping the incremental costs of extending VRP to non-sweeping use cases, with the simple commercial model proposed above are small. The benefits to UK businesses, consumers, and the economy in general look to be very large. Given this is low cost, and high benefit and there is no likelihood of market forces driving ASPSP adoption there seems to be a strong case for early regulatory intervention to, as a minimum, require the CMA9 not to restrict their use cases for VRP to sweeping and apply the same commercial model as Sweeping and single OB payments. It is clear that this competition and innovation enabler will not happen without this intervention. The PSR has the regulatory powers to make this intervention today.

- In addition to the two macro barriers to adoption identified above, there is a small but very important technical barrier to significant VRP roll out, whether for sweeping or non-sweeping – Software Statement deployment. For OB single payments each TPP must lodge an OB 'Software Statement' with each ASPSP the TPP is going to use. This is a one-off process. Once set up it accommodates all the TPP's current and future customers. However, VRP has been configured with a requirement for different individual software statements for <u>each</u> individual TPP business customer to be lodged with <u>each</u> ASPSP by <u>each</u> TPP. This is an unnecessary and unscalable requirement that would make operational deployment of VRP services massively complex for TPPs and ASPSPs. OBIE is aware of this issue and has developed an update to the VRP standards to resolve this problem, however the new standard has not been issued and ASPSPs are not as far as we are aware planning to deploy it. JROC needs to provide direction to OBIE to promulgate this change to the standard so that VRP can be properly deployed.

The Payment Systems Regulator Panel's recent *Digital Payments Initiative* report makes many of these points very clearly and is the product of wide cross-industry consultation and discussion. https://www.psr.org.uk/publications/general/psr-panel-s-digital-payments-initiative-report/

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QUESTION 3:

What areas would multilateral agreements covering services beyond the Order and existing regulations need to cover in order to facilitate continued development of open banking payments in a safe and efficient manner? Please provide rationale and evidence.

Subject to the comments we have made in Q1, very many aspects of the UK open banking ecosystem are working well. Payments adoption is certainly ahead of many EU countries and the work that OBIE has done over the last few years has delivered effective ecosystem working.

Our view on commercial models for non-sweeping VRP means that from a commercial perspective no additional agreements would be needed between ASPSPs and TPPs.

To the extent that there are incremental elements that might need to be included in agreements and could not be incorporated into the existing OBIE managed model, then they need to be multi-lateral, not bilateral, for the natural monopoly reasons we identified above for pricing. It would also be impractical for TPPs to have to follow different obligations depending on the ASPSP the payer chooses to use to pay VRPs.

The OBIE sponsored standards and protocols alongside existing financial regulations overseen by the FCA cover all the liability, responsibility and ecosystem communications and escalation needs of current OB payments. We are yet to be convinced that any incremental requirements for VRP could not be included in the existing model (it is seen to be suitable for sweeping VRP), and therefore do not yet see a case for the creation of a multi-lateral agreement. Indeed, for industry simplicity the case for such an agreement would have to be compelling for it to make sense. We don't believe OB payments or VRP need the creation of a 'scheme'.

OBIE clearly has the capability to make this work, it just needs the authority from the PSR and FCA through JROC to apply it.

QUESTION 4:

Functional capability: what are the most appropriate use cases to consider, and what additional functional capabilities and considerations (e.g., risk management) would be needed to support them? Please provide rationale and evidence.

Open banking payments are a platform and ecosystem where innovators such as TPPs can build new and competitive customer value propositions based upon the underlying capability created by OBIE. OB payments are not a product, nor are they a central scheme system like for example Faster Payments.

Examination of use cases should be to illuminate new possibilities and associated challenges, not to prescribe or constrain what innovators can do with OB. Generally, unlike the design and operation of a system like Faster Payments, we are not needing to manage systemic risk through OB.

We have outlined a number of interesting use cases in our discussion of the problems of delivering higher value payments and the opportunities for non-sweeping VRP.

Beyond VRP, the only other functional capability we can see value in that is not available today from OB or the underlying Faster Payments system is a pay 'now or never' capability. This capability would support payments where the receiving business needs certainty in real time that either a payment has been made or hasn't. Currently, while Faster Payments delivers this outcome most of the time, there can be occasional situations, for example where the sending bank is an agency bank, when a payment may lie in a pending state for a number of hours prior to either succeeding or failing. This uncertainty cannot work with some point of sale and other use cases, although there are some work arounds, such as counting 'pending' as a failed payment and then refunding funds should they arrive later.

To deliver this capability requires functionality not available in Faster Payments, and this requirement will therefore have to be considered in the specification of the New Payments Architecture's clearing and settlement service, and then exposed to TPPs via adjusted OB APIs.

QUESTION 5:

Dispute process: how should payment disputes be managed, and what does this imply for consumer protection and redress? Please provide rationale and evidence.

Although this question asks about how 'payment disputes' should be managed, many of the consumer protections and redress capabilities that have been incorporated into cards (but not Direct Debit, Cash, Cheques or Faster Payments) cover commercial, not payment disputes. The Direct Debit guarantee, for example, only covers payers for errors and mistakes made when collecting an agreed payment, it does not provide any consumer protection for commercial or product or service delivery issues – you are only protected by the guarantee if your supplier has collected the wrong amount or at the wrong time.

Commercial disputes (you haven't delivered the correct product, the service was unsatisfactory, or you've gone out of business before supplying my service) are all covered by existing consumer protection laws and the small claims courts.

The commercial protection of Section 75 for credit card payments is a product of the credit agreement between the card user and the issuer. The extension of these protections to debit cards is a voluntary offering made by card issuers for competitive reasons. These protections come with significant costs (interchange and other fees) and uncertainty for businesses, although these costs and disadvantages are normally invisible to consumers, and through non-discounting rules can't be made visible to consumers by the businesses that carry them. This in itself means that there is no price signal to consumers of the cost to them of these protections and also that the costs of these protections has to be spread across all payment instruments and all customers, not just the card payments and customers that benefit from them.

No other payment methods, Bacs credits, cash, CHAPS, cheques nor Faster Payments, have any card-like protections and these methods are still readily used and trusted by consumers and businesses for payment.

In some sectors there are also other industry protections, like ATOL and IATA protections that have developed to help protect consumers from certain commercial failures.

So, before proposing to move card protections across to OB payments, lock, stock and barrel, we need to consider what elements of 'payment' versus 'commercial' protection make sense. While there are a number of areas, for example those covered by the DD guarantee and indeed existing financial regulation, that make sense, and already apply to OB payments, there is a grey area in the middle where a fuller economic and policy discussion is needed.

As a TPP we, and we believe, most other TPPs have seen a remarkably low level of payment disputes between customers, merchants, TPPs and ASPSPs. This is not by accident, but substantially due to the architecture and design of OB payments processes and services that have been built from the ground up to avoid many of the issues associated with previous payments models. Given this it is important that further work in this area focuses on real areas of concern rather than trying to retrofit the solutions developed for previous payment systems to OB where many of these issues simply don't arise.

QUESTION 6:

Access & reliability: are greater levels of access and reliability needed to ensure success or not? Please provide rationale and evidence. What needs to be done in order to give customers and retailers sufficient confidence that payment journeys are efficient, and payments are certain?

Over the last few years OBIE has done a good job identifying and holding CMA9 ASPSPs to account to fix API performance issues. The reliability of ASPSP APIs is not an issue for us as a TPP.

There are however higher-level protocol and standards issues that prevent the delivery of a good, or in some cases any payments capability. These can be characterised as ASPSP compliance and equivalence issues, have been reported to the FCA as PSD2 regulator, but don't seem to be resolved with any speed. Examples include:

- Barclays preventing any OB payment over £2,000 mentioned in earlier answers.
- Revolut requiring the provision of a payee post code for an OB payment but not an own channel payment.
- Tide preventing OB payments that have not previously been set up as a payee in Tide's own app.
- Fraud processes from Lloyds that can take an hour waiting on a fraud hotline for a customer to get an OB payment enabled.

As mentioned above, JROC needs a process that can fast-track these important compliance failures and focus ASPSPs on delivering against their regulatory obligations.

Each time an end-customer suffers one of these obstacles they are less likely to adopt OB payments, and every time a business's end-customer comments or complains about the OB payment process to their merchant or supplier, the less likely the supplier is to continue to promote OB payments as a good option for their customers.

QUESTION 7:

Competitive pricing: in terms of commercial models for the use cases, what are the challenges with current charging models, and how can competitive pricing be achieved in a fair manner that incentivise actors to take part?

What do commercial models and pricing need to do for the players in the OB ecosystem, particularly TPPs and ASPSPs?

- **TPPs**. TPPs are the drivers of innovation and competition in the OB ecosystem. They need to be able to use the underlying ASPSP capability at a cost that allows them to offer services to their customers that can compete strongly with existing payments services (especially, cards and other ASPSP provided services), as well as deliver the future profitability needed to underpin the risk capital they need to fund and build their businesses in an uncertain market.

- **ASPSPs**. For core OB services (from the CMA order, PSD2 and any future competition enabling regulatory interventions), ASPSPs have a legitimate need to cover their marginal costs of provision to the same extent that their own channel payments cover their costs. As OB and PSD2 were regulatory remedies to address lack of competition in banking and payments there are a number of objectives that ASPSPs shouldn't expect to realise through commercial models and pricing:
  - **Recovery of OB investment**. ASPSPs were directed to build this capability as a regulatory remedy to a lack of competition. This cost has been covered by the previous higher profits made by ASPSPs in the less competitive market. In a number of public and private fora ASPSPs have suggested that they need to have Premium APIs to pay back this investment they were forced to make in the CMA and PSD2 remedies. This is not legitimate.
  - **Protection of existing revenue streams, especially from competing services like cards**. In our discussion with a number of ASPSPs about commercial models for non-sweeping VRP ASPSPs have said they must charge prices that do not undermine their card issuing revenues, otherwise there is no business case for them to open up VRP. This is fundamentally true and suggests that this factor will stop ASPSPs offering competitive prices for VRP. This also strongly indicates that a regulatory intervention on the pricing model (to follow SIP, sweeping and the Direct Debit approach) will be needed if OB is to be able to compete with card continuous payment authority usage, a current significant source of revenues for ASPSPs.
  - **Restriction of TPP commercial models, specific customers and pricing to their customers and the services/use cases they can offer**. In our discussions with ASPSPs about non-sweeping VRP many have made it clear that they will want to vet our customers and commercial models before allowing us to take on a customer. These ASPSPs argue that they need to assess the risk to their businesses of supporting individual merchants/billers. This is not the case with SIP OB payments and a responsibility that falls to the FCA as overseers of TPPs. These ASPSP requirements are anti-competitive on a number of dimensions.
    - ASPSPs shouldn't be able to decide whether they allow a TPP use case or particular TPP client as they may choose to refuse business which will compete with their existing services.
    - Some ASPSPs are also TPPs planning to operate in the VRP services space and shouldn't be informed of the customers a competing TPP is talking too.
    - ASPSP controls give ASPSPs collective control over what they are competing against. Given that VRP services need a degree of ubiquity from paying ASPSPs to work (a proposition will not get off the ground if only some of a business's end customers can use it) this gives the power to any mainline ASPSP to kill a TPP's proposition.

VRP services will be very hard for TPPs to price and sell if ASPSPs are allowed to charge TPPs rather than their own customers to use the VRP service. Apart from having to negotiate individual agreements with each ASPSP, the TPP will then have to estimate the end-customer ASPSP mix and probably transaction value per end customer ASPSP for a particular client in order to be able to estimate what their average VRP costs will be. Not only would price levels be expected to be different between ASPSPs (unless there had been collusion) but the structure might also be different. One ASPSP might charge a cost oriented fixed fee per payment, while another might charge a card issuing revenue anti-cannibalisation fee of a per centage of value.

ASPSPs may argue that with the current model, and without Premium API charges for currently non-regulated OB services they are not incentivised to participate. To a certain extent this is true but unavoidable.

- ASPSPs incentive to properly support the CMA order and PSD2 is regulatory compliance with a number of competition remedies. There need not and indeed should not be any other incentive to comply with law and regulations.
- Given that voluntarily enhancing OB services and supporting their adoption acts against the fiduciary duty of ASPSPs because they may push back other revenue positive investments and risk cannibalising very significant current sources of revenue from card issuing, in the interests of further reducing ASPSP's payment gatekeeper role and furthering competition in the interests of businesses and consumers regulators will have to provide the incentives, not commercial models.
- Even with the commercial model and pricing for VRP we are proposing, ASPSPs still earn as much from these new payments as they do from existing Faster Payments. ASPSPs are being paid, not by TPPs but by their end customers (maintaining a higher degree of competitive pressure on ASPSPs).

ASPSPs are concerned, with some justification, that even though other players in the ecosystem may be introducing risks, it will be the ASPSPs that have to cover this, not the TPPs. As part of the regulation of TPPs by the FCA, the FCA examines and reviews their commercial models and the risks they generate. It must be down to the FCA to maintain this oversight of TPPs, not for individual ASPSPs to second guess them. A consequence of this is that The FCA and other regulators need to focus their controls and remedies on the risk generating parties and not simply pass everything onto the ASPSPs.

SUPPLEMENTARY QUESTION

Are there any additional issues pertaining to open banking payments that you wish to raise that are not covered in the preceding questions?

Appendix – Supporting Evidence